

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1984

UNITED STATES OF AMERICA,  
*Petitioner*

v.

RIVERSIDE BAYVIEW HOMES, INC., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF AND  
PROPOSED BRIEF AS AMICI CURIAE

NATIONAL WILDLIFE FEDERATION, AMERICAN FISHERIES  
SOCIETY, AMERICAN LITTORAL SOCIETY,  
BASS ANGLERS SPORTSMAN SOCIETY,  
CHESAPEAKE BAY FOUNDATION, INC., ENVIRONMENTAL  
POLICY INSTITUTE, STATE OF FLORIDA, FLORIDA  
AUDUBON SOCIETY, FLORIDA WILDLIFE FEDERATION,  
MICHIGAN UNITED CONSERVATION CLUBS, INC.,  
NORTH CAROLINA WILDLIFE FEDERATION,  
SCENIC HUDSON, INC., SIERRA CLUB,  
TENNESSEE CONSERVATION LEAGUE,  
WILDLIFE MANAGEMENT INSTITUTE,  
CLEAN WATER ACTION PROJECT,  
SOUTH CAROLINA WILDLIFE FEDERATION,  
ENVIRONMENTAL DEFENSE FUND, INC.,  
STATE OF MICHIGAN,  
NATURAL RESOURCES DEFENSE COUNCIL, INC.,  
LOUISIANA WILDLIFE FEDERATION, and  
TROUT UNLIMITED

IN SUPPORT OF PETITION

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**No. 84-701**

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The National Wildlife Federation and the above named organizations (NWF et al.) hereby respectfully move for leave to file the attached brief as amici curiae in support of the United

States. The consent of counsel for the respondent has been requested but not yet obtained. The petitioner has consented.

The interest of amici curiae in this case arises from the fact that the court of appeals decision could potentially remove significant portions of this Nation's wetlands from the coverage of Section 404 of the Clean Water Act, 33 U.S.C. 1344.

Amici curiae consist of two States and various non-profit membership organizations dedicated to the conservation and wise use of natural resources including wetlands. Members and citizens of amici curiae regularly use and enjoy the wetlands of the United States for outdoor recreation, including fishing, hunting, hiking, camping, nature observation, photography, scientific study, and aesthetic enjoyment. Members and citizens of amici curiae also have a substantial interest in the protection and preservation of wetlands because these resources contribute to the maintenance and restoration of the chemical, physical, and biological integrity of the Nation's waters. Members and citizens of amici curiae will be adversely affected by a judicial decision which removes important wetlands from the regulatory scope of Section 404 of the Clean Water Act.

Amici curiae have participated extensively in all facets of public decisionmaking on the use of wetlands. Amici curiae have also brought, entered, and filed amicus curiae briefs in numerous lawsuits involving Section 404 and wetlands. National Wildlife Federation, Michigan United Conservation Clubs, Inc., and Tennessee Conservation League filed a brief as amicus curiae in support of the United States' petition for rehearing of the court of appeals decision. A more detailed statement of the interests of amici curiae is set out as Appendix A to the attached proposed brief.

As more fully set forth in the attached proposed brief, amici curiae are concerned that the court of appeals incorrectly narrowed the geographic scope of Section 404 contrary to congressional intent. In addition, amici curiae believe that the court of appeals decision warrants review by this Court because of the decision's potential impact on wetlands which provide substantial values and therefore should be protected.

The proposed brief is intended to supplement but not duplicate the United States' petition. As such, the brief should assist the Court in determining whether to grant a writ of certiorari.

Accordingly, amici curiae NWF et al. respectfully request leave to file the attached brief in support of the United States.

Respectfully submitted,

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**QUESTION PRESENTED**

Whether the definition of wetlands for purposes of Clean Water Act regulation correctly includes wetland areas that are not frequently flooded by adjacent streams.



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**IN SUPPORT OF PETITION**

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**INTERESTS OF AMICI CURIAE**

Amici curiae consist of two States and various non-profit membership organizations dedicated to the conservation and

wise use of natural resources including wetlands. Members and citizens of amici curiae regularly use and enjoy the wetlands of the United States for outdoor recreation, including fishing, hunting, hiking, camping, nature observation, photography, scientific study, and aesthetic enjoyment. Members and citizens of amici curiae also have a substantial interest in the protection and preservation of wetlands because these resources contribute to the maintenance and restoration of the chemical, physical, and biological integrity of the Nation's waters. Members and citizens of amici curiae will be adversely affected by a judicial decision which removes important wetlands from the regulatory scope of Section 404 of the Clean Water Act.

Amici curiae have participated extensively in all facets of public decisionmaking on the use of wetlands. Amici curiae support Section 404 of the Clean Water Act, 33 U.S.C. 1344, and believe in preservation of the geographical scope of Section 404 in its present form. Amici curiae have also brought, entered, and filed amicus curiae briefs in numerous lawsuits involving Section 404 and wetlands. A more detailed statement of the interests of amici curiae is set out as Appendix A to this brief.

### INTRODUCTORY STATEMENT

Section 404 of the Clean Water Act, 33 U.S.C. 1344, prohibits the unpermitted discharge of dredged or fill material into waters of the United States, including wetlands. 33 U.S.C. 1344 & 1362(7). The Secretary of the Army, through his designee, the Corps of Engineers, and the Environmental Protection Agency are responsible for enforcement of Section 404. This action was brought to enjoin an unpermitted discharge of dredged or fill material into a wetlands site owned by the respondent Riverside Bayview Homes, Inc. (Riverside).

The district court held seven days of hearings and visited the site, primarily to determine whether Riverside's tract contained a wetland (Pet. App. 23a). The testimony demonstrated that the site is characterized by the presence of plants such as cattails, sedge, and common reed. *E.g.*, Tr. Jan. 13, 1977, at

20-21, 36; Jan. 15, 1977, at 8-9, 14, 21, 87, 130. These plants require or are adapted to water-logged or highly saturated soils and, therefore, are commonly considered to be indicators of wetlands. U.S. Army Engineers Waterways Experiment Station, Preliminary Guide to the Onsite Identification and Delineation of the Wetlands of the Interior United States 9-12 & A1-A10 (1982); U.S. Fish & Wildlife Service, Classification of Wetlands and Deepwater Habitats of the United States 3 (1979).

In addition, the evidence showed that the soil on the tract has the characteristic of retaining water and that the water table is within inches of the surface. Tr. Jan. 22, 1977, at 114-115, 163. The area has been a wetland for decades. *E.g.*, Tr. Jan. 15, 1977, at 134. Riverside's tract is part of a larger wetland area on the western shore of Lake St. Clair (located approximately one mile from the site) and would be inundated but for a system of dikes and drains in the area. *Id.* at 156. The site is inhabited by muskrat and long-billed marsh wrens (*id.* at 54-55, 97), species found almost exclusively in wetlands habitat. Harper & Row's Complete Field Guide to North American Wildlife (Eastern Ed.) 150 & 265 (1981). At the time of the January 1977 hearing, the Riverside tract was covered by two to four inches of ice. Tr. Jan. 15, 1977, at 97.

On this evidence, the district court properly found a portion of the area to be a wetland and enjoined Riverside from filling that portion without first obtaining a Section 404 permit (Pet. App. 30a-31a).<sup>1</sup>

<sup>1</sup> In reaching this result the court applied the definition of "freshwater wetlands" contained in regulations promulgated by the Corps in 1975. 40 Fed. Reg. 31324-31325 (July 25, 1975), formerly codified at 33 C.F.R. 209.120(d)(2)(h). Subsequent to the entry of a preliminary injunction against Riverside, the Corps' definition of wetlands was revised in 1977. 33 C.F.R. 323.2(c) (1983) promulgated at 42 Fed. Reg. 37122 (July 19, 1977). The district court entered final judgment against Riverside without reference to the revised definition (Pet. App. 32a-37a). Upon Riverside's first appeal of the final judgment, the court of appeals remanded for reconsideration in light of the new 1977 definition (*id.* at 42a). The district court (by a different judge) sustained final judgment for the United States and Riverside appealed again (*id.* at 42a-44a).



The court of appeals reversed, ruling that Section 404 was inapplicable to the Riverside tract because the site was not "frequently flooded by waters from adjacent streams" (Pet. App. 12a and 15a). The court stated that this restrictive test was necessary to prevent presumably unconstitutional takings (*id.* at 13a-16a). Accordingly, the court reversed the district court's injunction of unpermitted discharges. The United States' petition for rehearing was denied (Pet. App. 20a-21a).

### REASONS FOR GRANTING THE PETITION

The United States' petition should be granted because the decision of the court below frustrates the clear intent of Congress in enacting Section 404, is in direct conflict with the decision of several other circuits, and will wreak havoc on consistent nationwide administration of this important program. While these grounds are amply explained in the petition, amici curiae submit this brief to amplify several points, primarily the impact of the court of appeals decision on the resources Congress intended to protect.

It is clear that Congress recognized the importance of wetlands and intended, through Section 404, to protect these areas to the full extent of its legislative authority under the Commerce Clause. The regulatory definitions of "wetlands" fully reflect this congressional mandate and good science. However, the decision of the court below frustrates the clear intent of Congress, ignores the scientific basis for the regulatory definitions, and threatens to remove important wetlands from the scope of Section 404.

1. Wetlands indisputably perform a number of functions that are socially, economically, and environmentally desirable. Numerous species of fish and wildlife inhabit wetlands and others depend on the contributions of wetlands to ecosystem food chains. U.S. Fish & Wildlife Service, *Wetlands of the United States: Current Status and Recent Trends* 13-18 (1984) (hereafter "Wetlands of the United States"). Wetlands improve water quality by filtering nutrients, wastes, and sediments from surface runoff before these materials reach water bodies.

*Id.* at 18-19. Wetlands perform millions of dollars worth of waste treatment. *Id.* Wetlands also reduce the effects of floods and storms by providing storage space for excess water and preventing millions of dollars of flood damage. *Id.* at 21-23. In addition wetlands recharge groundwater in aquifers providing public water supplies. *Id.* at 23. Finally, and not least of all, wetlands provide significant recreation and aesthetic value to hunters, fishermen, bird watchers, and others who appreciate the natural characteristics of these areas. *Id.* at 24-25. Even this latter function is of more than sentimental value: for example, sportfishermen alone spend \$13 billion per year to catch wetland-dependent fishes. *Id.* at 24.

Approximately 450,000 acres of wetlands are intentionally destroyed every year in the United States. Wetlands of the United States, *supra*, at 31. Ninety-seven percent of this loss has occurred in inland, freshwater wetlands such as Riverside's. Office of Technology Assessment, *Wetlands: Their Use and Regulation* 7 (1984) (hereafter "OTA, Wetlands"). The State of Michigan, where this case arose, has had 71 percent of its original wetlands destroyed. Wetlands of the United States, *supra*, at 32-34.

Section 404 of the Clean Water Act is virtually the only federal regulatory statute available to protect these wetlands from destruction. Want, *Federal Wetlands Law: The Cases and the Problems*, 8 Harv. Env. L. Rev. 4-5 (1984). Almost all coastal states have laws protecting coastal wetlands but only eight states have laws protecting inland wetlands. OTA, *Wetlands*, *supra*, at 13. Inland wetlands, which make up 95 percent of the Nation's wetlands, must rely almost entirely on Section 404 for protection. *Id.*

To a scientist, "wetlands" are essentially those areas where life can survive in a saturated environment. According to the United States Fish and Wildlife Service,

wetlands are lands where saturation with water is the dominant factor determining the nature of soil development and the types of plant and animal communities living in the soil and on its surface. The single feature that most wetlands share is soil or substrate

that is at least periodically saturated with or covered by water. The water creates severe physiological problems for all plants and animals except those that are adapted for life in water or in saturated soil.

U.S. Fish & Wildlife Service, *Classification of Wetlands and Deepwater Habitats of the United States* 3 (1979) (hereafter "Classification of Wetlands").<sup>2</sup> Thus the primary factor in classifying an area as a wetland is the extent and duration of water present. As a result, life existing in such areas must be tolerant of or dependent upon saturated conditions to survive. Hence, the Corps' and EPA's identical definitions of "wetlands" appropriately focus on "areas . . . inundated or saturated . . . at a frequency and duration sufficient to support . . . a prevalence of vegetation typically adapted for life in saturated soil conditions." 33 C.F.R. 323.2(c) (1983) (Corps) and 40 C.F.R. 230.3(t) (1983) (EPA).<sup>3</sup>

The source of the water for any particular wetland is irrelevant to the question of whether the area supports a prevalence of life forms typically adapted to saturated soil conditions. Thus the regulatory definitions again correctly state that the "inundat[ion] or saturat[ion]" may be caused "by surface or ground water." 33 C.F.R. 323.2(c) and 40 C.F.R. 230.3(t). By the same token the source of the water is not a limiting factor in whether wetlands perform valuable functions.

Therefore, a critical and significant flaw in the court of appeals decision is the requirement that a Section 404 wetland

<sup>2</sup> The U.S. Fish and Wildlife Service is responsible for administering the National Wetlands Inventory. See Section 208(i)(2), Clean Water Act, 33 U.S.C. 1288(i)(2). The National Wetlands Inventory is designed to use the Fish and Wildlife Service's biological expertise to provide scientific information on wetlands characteristics as well as to indicate the extent of such areas in the United States. *Wetlands of the United States*, *supra*, at i. The information is intended to provide technical assistance to agencies regulating activities in wetlands. *Id.*; see 33 U.S.C. 1288(i).

<sup>3</sup> EPA shares Section 404 permit responsibility with the Corps. EPA has ultimate authority in permit decisions by virtue of its power to veto any permit issued by the Corps. Section 404(c), 33 U.S.C. 1344(c). In addition, EPA has authority to bring an enforcement action against any unpermitted discharge of dredged or fill material into wetlands. Sections 301(a), 309(b) and (c), Clean Water Act, 33 U.S.C. 1311(a), 1319(b) and (c).

must be "frequently flooded by . . . adjacent streams" (Pet. App. 15a). This standard incorrectly removes from Section 404 the numerous types of wetlands which perform valuable wetlands functions because of saturated conditions and attendant life forms.

For example, approximately three million acres of "prairie pothole" wetlands exist in the Northern Great Plains. Wetlands of the United States, *supra*, at 42. These wetlands, formed in glacial depressions in an otherwise flat landscape, are seldom frequently flooded by adjacent streams. *Id.*; M. Weller, *Freshwater Marshes: Ecology and Wildlife Management* 7-9 and 12 (1981) (hereafter "Weller"). Nonetheless they perform significant wetland functions. Prairie potholes constitute only one-tenth of North America's waterfowl breeding area but produce half of the annual duck crop. Wetlands of the United States, *supra*, at 42. Waterfowl hunting is a \$638 million per year business in this country. *Id.* at 24. In addition these shallow depressions provide substantial flood control functions on the Great Plains. *Id.* at 43. Potholes have been found to retain up to 75% of surface runoff. *Id.* at 22. Prairie potholes are also believed to contribute to groundwater recharge. *Id.* at 23.

Alaska's 100 million acres of tundra wetlands are the result of snowmelt and the thawing of permafrost substrate. Weller, *supra*, at 10; Office of Technology Assessment, *Wetland Use and Regulation: Alaska Case Study 2-2 and 2-3* (1983). Again frequent flooding by adjacent streams plays little or no part in the maintenance of these wetlands. Yet tundra wetlands provide nesting and breeding habitat for millions of ducks, geese, other waterfowl, and shorebirds which migrate to Alaska each year. *Id.* at iii and 2-6 through 2-7. Caribou herds depend on vast areas of Alaska tundra not only for calving grounds but also for migratory range which prevents depletion of their lichen food supply. *Id.* at iii and 2-6 through 2-8.

Similarly the 2.2 million acres of pocosin wetlands in North Carolina are formed by groundwater and rainfall, not flooding by adjacent streams. C. Richardson, *Pocosin Wetlands* 5 (1980) (hereafter "Richardson"). These forested wetlands provide habitat for many animal species, including



coastal black bears. Wetlands of the United States, *supra*, at 49. Destruction of pocosin wetlands leads to increased freshwater runoff into saltwater and brackish estuarine systems, destroying shellfish and finfish nurseries. Richardson, *supra*, at 243-249. North Carolina's fishing industry is dependent upon estuarine nurseries and is estimated to generate more than \$300 million in revenues per year. *Id.* at 238-239.

All or most of these wetlands do not fall within the court of appeals' narrow restriction on the geographic reach of Section 404. Nonetheless they are undoubtedly wetlands from a scientific point of view and are capable of performing valuable wetlands functions. Moreover these same valuable functions stimulated Congress to include wetlands within the scope of Section 404.

2. In the course of considering proposals to restrict Section 404's geographic scope in 1977 (*see* Pet. 13-15), Congress expressly stated its concern that the Nation's valuable wetlands were being lost through ill-advised development. Many of the same wetland values discussed in Part I, *supra*, were identified in Floor debates by opponents of an amendment to narrow Section 404's reach. Senators Stafford, Chafee, Baker, and Hart, all members of the Senate Committee reporting the 1977 amendments to the 1972 Clean Water Act, described at length these valuable wetlands roles. Congressional Research Service, 95th Cong., 1st Sess., Legislative History of the Federal Water Pollution Control Act Amendments Vol. 4 at 881-882, 917, 920-923, and 927 (1977) (hereafter "Leg. Hist."). Senator Baker's remarks summarized these values:

As you know, wetlands are a priceless, multiuse resource. They perform the following services:

First, high yield food sources for aquatic animals;

Second, spawning and nursery areas for commercial and sports fish;

Third, natural treatment of waterborne and airborne pollutants;

Fourth, recharge of ground water for water supply;

Fifth, natural protection from floods and storms; and

Sixth, essential nesting and wintering areas for waterfowl.

We should be mindful of the fact that when these areas are polluted out of existence, we will have lost the very valuable free service of nature; and if toxic-laden dredged or fill material is discharged into wetlands, we risk poisoning the very foundation of our aquatic system.

4 Leg. Hist., *supra*, at 923.

Although an amendment limiting Section 404's geographic scope passed the House, opponents there espoused these same values. For example, Representative Lehman argued that Section 404

is a key to the protection of drinking supplies, finfish and shellfish spawning grounds, wildlife nesting and breeding areas, and countless aesthetic and recreation benefits that are enjoyed throughout the Nation. Furthermore, wetlands provide free of charge \$140 billion worth of flood protection and water purification services, according to the clean water action project. Such priceless natural resources should be given Federal protection from development and destruction. However, the amount of wetlands in our Nation has diminished by 50 percent over the past 200 years.

*Id.* at 1317. Representative Bonior, whose District includes Riverside's wetlands, invoked similar arguments in support of broad Section 404 jurisdiction. *Id.* at 1320; *see also id.* at 1247 (House Committee Report, Additional Views of Reps. Edgar and Myers).

Recognition of the very same values discussed in Part I, *supra*, and performed by wetlands excluded by the court of appeals decision carried the day as Congress deliberately refrained from narrowing the geographic scope of Section 404. Legislative history in this context has "persuasive value" because "Congress is not merely expressing an opinion . . . but is

acting on what it understands its own prior acts to mean.' " *Bell v. New Jersey*, 102 S. Ct. 2187, 2194-2195 & n. 12 (1983), quoting *Mount Sinai Hosp. v. Weinberger*, 517 F.2d 329, 343 (5th Cir. 1975). Here Congress clearly explained that in 1972 it meant the term "navigable waters" to encompass the vast multitude of wetlands so beneficial to society without regard to the kind of artificial standard invented by the court of appeals. See *Minnehaha Creek Watershed Dist. v. Hoffman*, 597 F.2d 617, 626 (8th Cir. 1979) (applying 1977 legislative history to determine regulatory scope of Section 404 as originally passed).

The court of appeals' constricted reading of Section 404 would remove from the statute many of the very wetlands which Congress sought to cover. Thus the decision violates the cardinal rule of statutory construction requiring federal statutes to be interpreted "in light of the purposes Congress sought to serve." *Chapman v. Houston Welfare Rights Org.*, 441 U.S. 600, 608 (1979). Moreover the decision casts in doubt the federally regulated status of millions of acres of valuable wetlands.

3. The court below also incorrectly ignored express congressional intent that the geographic reach of Section 404 is to be coextensive with Congress' authority under the Commerce Clause (U.S. CONST. Art. I, § 8, cl. 3). Section 404(a) prohibits unpermitted "discharge of dredged or fill material into the navigable waters . . ." 33 U.S.C. 1344(a). "Navigable waters" is defined in the Act to mean "waters of the United States, including territorial seas." Section 502(7), 33 U.S.C. 1362(7). Congress intended "navigable waters" to "be given the broadest constitutional interpretation." 1 Leg. Hist., *supra*, at 144 (Conference Committee Report on 1972 Act); see Pet. 12-13.

Other courts addressing the issue of the geographic limits of Section 404 have held that the term "navigable waters" in Section 404 was intended to reach to the limits of Congress' Commerce Clause authority. *E.g.*, *Utah v. Marsh*, 740 F.2d 799, 802 (10th Cir. 1984); *Avoyelles Sportsmen's League v. Marsh*, 715 F.2d 897, 914-916 & n. 33 (5th Cir. 1983); *United States v. Tilton*, 705 F.2d 428, 431 (11th Cir. 1983).<sup>4</sup> Therefore

<sup>4</sup> Cf. *United States v. City of Fort Pierre*, No. 84-1162 (8th Cir. Oct. 31, 1984).

the only limits on Section 404's applicability to a wetland are (1) whether the area meets the regulatory definition of "wetlands," 33 C.F.R. 232.2(c) and 40 C.F.R. 230.3(t), and (2) whether regulation of discharges into the area is within Congress' Commerce Clause authority.

The court of appeals decision ignores the multitude of federal cases extending Section 404's coverage to the limits of the Commerce Clause. Moreover, the "frequently flooded by . . . adjacent streams" restriction is completely at odds with such an analysis since it is quite easy to identify wetlands which affect interstate commerce but do not meet the test fashioned by the court below.

For example, the Tenth Circuit Court of Appeals has recently ruled that Section 404 applies, by virtue of the Commerce Clause, to fills in an "isolated" lake (i.e., not connected to a surface tributary system) in part because the lake provides habitat for migratory waterfowl protected by other federal law and international treaty. *Utah v. Marsh*, *supra*, 740 F.2d at 804. Prairie potholes, described in Part I, *supra*, are the most significant migratory waterfowl breeding areas in North America. Most prairie potholes are not "frequently flooded by . . . adjacent streams." Accordingly the decision of the court below is wholly contrary to Congress' intent to apply Section 404 to all wetlands, subject only to Commerce Clause limitations.

b. The Sixth Circuit's unsupportable repudiation of the other circuits' rulings will lead to an unmanageable inconsistency in the enforcement of Section 404 on a nationwide basis. In addition to the practical difficulties identified by the United States (Pet. 21-22 & n. 20), the court of appeals decision creates a wholly unpredictable jurisdictional test because nowhere did the court explain how "frequently" an area must be flooded by an adjacent stream to constitute a wetland.

All that can be said is that an area flooded five or six times within the 80 years in which flooding records are available (see Pet. App. 28a-29a) is not a wetland. There is no way of knowing whether flooding five or six times within 79 or fewer years or seven or more times within 80 years is sufficiently



"frequent." Identification of plant species adapted to saturated soil conditions is relatively easy; identification of areas "frequently flooded" is not. Substitution of such an unworkable test for a reasonably predictable one, upheld by other courts and consistent with congressional intent, creates an intolerable and unjustified burden for regulators, dischargers, and those who wish to preserve wetlands.<sup>5</sup>

<sup>5</sup> The United States notes that the court of appeals decision will impose substantial financial cost on regulators and landowners attempting to determine jurisdiction under the "frequently flooded" test. Pet. 21. This argument is compelling in view of the fact that Congress rejected the "traditional" navigable waters approach (see Pet. 3-4) for Section 404 in part to avoid imposing such a financial burden:

For example, the old jurisdictional mean high water line in our coastal waters was costly to establish . . . .

Today this problem has been eliminated. The location of a coastal marsh by using the aquatic vegetation line accurately identifies most marsh areas . . . . *No longer is it necessary to expend thousands of dollars for tide experts and surveyors to establish the exact mean high water mark as required by the old [C]orps program.*

<sup>4</sup> Leg. Hist., *supra*, at 922 (Remarks of Sen. Baker, Aug. 4, 1977) [emphasis added]. These concerns apply as well to hydrologists' costs.

## CONCLUSION

For these reasons and those stated in the petition, the United States' petition for a writ of certiorari should be granted.

Respectfully submitted,

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## **APPENDIX A**

### **Detailed Statement of Interests**

The National Wildlife Federation is a nonprofit membership organization incorporated in 1939 under the laws of the District of Columbia. The Federation maintains its headquarters at 1412 Sixteenth Street, N.W., Washington, DC 20036 (telephone 202-797-6827). The Federation is the largest nongovernmental conservation education organization in the world, with affiliate organizations in 49 states and three territories. Its 4.1 million members and supporters are dedicated to increasing public awareness of the need for wise use, proper management, and conservation of our natural resources. The Federation undertakes a comprehensive conservation education program, distributes numerous periodicals and educational materials, lobbies for the adoption of laws to protect and improve the environment, and litigates when necessary to conserve natural resources and wildlife. The Federation has undertaken a wide range of legal, legislative, administrative, and educational initiatives aimed at improving the conservation of wetlands and other wildlife habitat.

The American Fisheries Society is a nonprofit professional society organized in 1870 to promote the conservation, development and wise utilization of recreational and commercial fisheries. The Society supports the conservation of wetlands because such areas play a critical role in the well-being of many fisheries. The Society has 8,300 members.

The American Littoral Society is a nonprofit membership organization founded in 1961 to encourage scientific research of and foster public interest in aquatic life. The Society's members include fishermen, hunters, and others who use wetlands and work for the conservation of this resource. The Society has 5,000 members.

The Bass Anglers Sportsman Society (BASS) is a nonprofit membership organization founded in 1968 to fight pollution and provide conservation education. BASS's member sportsmen and 1500 affiliated local chapters are located in all

50 states. BASS's members are committed to the preservation of wetlands and water quality in order to maintain and enhance the nation's fishery resources.

The Chesapeake Bay Foundation, Inc., is a nonprofit regional membership organization founded in 1966 to promote the environmental welfare and proper management of Chesapeake Bay, including its tidal tributaries. The Foundation accomplishes these goals through citizen representation, environmental education, and land preservation. The Foundation has 6,500 members.

The Environmental Policy Institute is a nonprofit organization that conducts research, education, lobbying, and litigation on key energy and environmental laws. The Institute is dedicated to organizing economically, politically, and geographically diverse citizen coalitions on environmental issues including water quality and wetlands protection. The Institute produces a periodic educational newsletter reporting on these issues to concerned citizens across the country.

The State of Florida has a vital interest in protecting the significant wetland resources found in Florida. Over 40 percent of Florida's original wetlands have been destroyed by human activity. This loss has had a devastating effect on Florida's economy, causing increased flooding of property and decreased catches in fisheries dependent upon wetlands. Although Florida has enacted wetlands legislation, a strong federal regulatory program is necessary to enhance State wetlands protection.

The Florida Audubon Society is a statewide nonprofit organization founded in 1900 to provide an understanding of, and an interest in wildlife, and in the environment that supports it, and to further the cause of wildlife conservation.

The Florida Wildlife Federation is a statewide nonprofit organization affiliated with the National Wildlife Federation whose goals and objectives it shares.

Michigan United Conservation Clubs, Inc., is a statewide nonprofit organization affiliated with the National Wildlife Federation whose goals and objectives it shares.

The North Carolina Wildlife Federation is a statewide nonprofit organization affiliated with the National Wildlife Federation whose goals and objectives it shares.

Scenic Hudson, Inc. is a nonprofit citizen's conservation group founded in 1963 to improve and preserve the natural, recreational, historic and scenic resources of the Hudson River Valley, including wetlands.

The Sierra Club is a nonprofit national membership organization founded in 1892 to promote the responsible use of the earth's ecosystems, to enjoy and protect the earth's resources, and to educate humanity in the need to protect and restore the quality of the natural and human environment. With approximately 336,000 members and 54 local chapters coast to coast, the Sierra Club works on legislation, litigation, public information, and outings to protect, understand, and enjoy the natural environment.

The Tennessee Conservation League is a statewide nonprofit organization affiliated with the National Wildlife Federation whose goals and objectives it shares.

The Wildlife Management Institute is a national nonprofit membership organization, supported by industries, groups, and individuals, promoting better use of natural resources for the welfare of the Nation. The Institute is particularly concerned with the conservation of wetlands because of the importance of this resource to wildlife habitat.

The Clean Water Action Project is a national citizen action organization founded in 1971 to work for strong pollution controls and safe drinking water. The Project believes that the conservation of wetlands contributes to both of those goals.

The South Carolina Wildlife Federation is a statewide nonprofit organization affiliated with the National Wildlife Federation whose goals and objectives it shares.

The Environmental Defense Fund, Inc., is a nationwide public interest organization of lawyers, scientists, and economists dedicated to protecting and improving environmental quality and public health. The Fund pursues responsible reform of public policy in a number of environmental fields including water resources, land use, wildlife, and wetlands conservation, working through research, public education, and judicial, administrative, and legislative action. The Fund has 50,000 members including residents in all 50 states.

The State of Michigan was the first state in the nation to assume responsibility for dredge and fill projects, in waters regulated under Section 404 of the Clean Water Act, 33 U.S.C. 1344, from the United States Environmental Protection Agency. Michigan has a long history of concern for, and actions to protect, its valued wetlands. Michigan is vitally interested in the outcome because the controversy involves natural resources located within the State of Michigan and because, for the reasons stated in the brief of the United States, Michigan believes that this case involves issues appropriate for review by the Supreme Court of the United States.

The Natural Resources Defense Council, Inc., is a non-profit membership organization, founded in 1970, to protect America's endangered natural resources and to improve the quality of the human environment. The Council combines an interdisciplinary legal and scientific approach in monitoring government agencies, bringing legal action and disseminating citizen information on a number of issues including water pollution, resource management, wildlife protection, and coastal zone management. The Council has 45,000 members.

The Louisiana Wildlife Federation is a statewide nonprofit organization affiliated with the National Wildlife Federation whose goals and objectives it shares.

Trout Unlimited is a nonprofit international conservation organization founded in 1959 and dedicated to the protection of clean water and the enhancement of trout and salmon fishery resources. Trout Unlimited has 32,000 members.